

REMARKS

Claims 1-20 are canceled and new claims 21-25 are presented for examination on their merits. New claim 21 corresponds to claim 20 that was before the Examiner, with claims 21-24 corresponding to claims 3-5. New claim 25 further defines the actual lighting of the charcoal.

Applicant submits that the prior art does not establish a *prima facie* case of obviousness against new claim 21.

In the final rejection, the Examiner relied on Sippel to allegedly teach the claimed composition. Commercial Kerosene was used to support the position that the claimed flashpoint is inherent in Sippel. Ram is cited to allege that the claimed property concerning the molecular weight is also inherent in Sippel. Van Gilder is cited to address the concentration limitations of the kerosene and polymer of claim 3.

For claim 20, the Examiner took the position that the “incendiary” teaching of Sippel can be interpreted broadly and that a *prima facie* case of obviousness is established against this claim.

The question of obviousness is whether one of skill in the art would use the composition of Sippel to light charcoal in a barbecue. The Examiner says that this would be obvious. Applicant disagrees for the simple reason that Sippel’s incendiary composition is not one that anyone would use to light charcoal in a barbecue.

In formulating the rejection, the Examiner isolates the word “incendiary” from the rest of Sippel to say that “incendiary” in the abstract teaches “capable of causing fire.” Applicants do not dispute that such a definition in the abstract is reasonable.

However, the question of obviousness is not determined in the abstract from the standpoint of the entire prior art. Applicant submits that it is not reasonable for the Examiner to ignore the main points of Sippel when making the rejection. Sippel's composition is for flamethrowers and fire bombs, see col. 5, lines 32-40. It is purposely one that ignites by the mere exposure to air and includes a self igniting component to accomplish this aim. Such a fuel would never be used to light the charcoal in a barbecue for the obvious safety problem that would arise. The mere exposure of the composition to air could cause ignition, which would present a great risk to the person managing the lighting of the barbecue as well as others in the vicinity.

The Examiner's reliance on Van Gilder to support the rejection of claim 20, now claim 21, is also in error. In the rejection of claim 1, the Examiner does not reference Van Gilder when formulating the rejection, even though Van Gilder is recited in the base rejection of the claims.

From the discussion of claims 3 and 15 beginning at the bottom of page 4 of the final rejection, the Examiner appears to use Van Gilder to address the limitations concerning the kerosene and polymer amounts.

However, the Examiner also seems to rely on Van Gilder to formulate the rejection based on the comments in the Response to Arguments section concerning claim 20. The Examiner notes that Van Gilder discloses that a fuel can be used in place of the lubricating oil and notes the various uses of the composition of Van Gilder.

The invention of Van Gilder relates to the control of the size of the polymer particles so that high viscosity blends can be made which are homogenous and lump

free with simple agitation. Van Gilder provides comparative data for different sized pellets and crumbs to show the effect of the pellet size. Lubricating oil is used as the solvent but, as the Examiner notes, other solvents can be used. The purpose of the polymer solutions is disclosed in col. 3, lines 57-61. These uses are completely unrelated to Sippel's flamethrowing composition.

In the Response to Argument section addressing claim 20, the Examiner notes that Van Gilder teaches alternative solvents and various uses of the polymer solution. In this paragraph, the Examiner merely cites to Van Gilder but says nothing about how its teachings are used with Sippel or why Van Gilder makes it obvious to use the composition of Sippel for lighting charcoal in a barbecue.

In fact, Van Gilder and Sippel are unrelated and the mere fact that Van Gilder teaches that alternative solvents can be used to make Van Gilder's polymer solution has no bearing on the question of obviousness presented above. As such, it is error if the Examiner is somehow relying on the teachings of Van Gilder to say that the flamethrowing composition of Sippel is suitable for barbecue use.

Moreover, the Examiner cannot say that the inventive composition and Sippel are the same in the context of the method of use claim. In the composition claim and method of making claim, the Examiner ignored the fact that Sippel required a self igniting component as triethylaluminum (TEA) as part of the composition. The Examiner justified this since the claims were not closed due to the use of "comprising." However, in addressing the method of use claim, the Examiner cannot ignore the fact that Sippel uses a self igniting component, i.e., TEA, as an essential part of the

composition. With the presence of this self igniting component, one of skill in the art would not find it obvious to use such a flamethrowing composition to light charcoal in a barbecue. Put another way, the Examiner does not have the articulated reasoning based on objective facts to support the allegation that it would be obvious to use the composition of Sippel to light charcoal in a barbecue.

The Examiner also has no reason to say that it would be obvious to remove the self igniting component of Sippel and then use this modified composition for barbecue lighting. As mentioned above, the TEA of Sippel is essential and one of skill in the art would not find it obvious to remove it. In fact, removing it makes the composition of Sippel inoperative and this is another reason that such a modification is not legitimate.

Finally, the question of obviousness is not simply using the composition of Sippel in a different manner. The invention relates to an improved charcoal lighting composition. This is not in the least related to the self igniting composition of Sippel. The differences between the invention and Sippel from a compositional standpoint are so great that one of skill in the art would not even consider the question of using Sippel to light charcoal in a barbecue.

In light of the above, claims 21-25 are in condition for allowance.

Accordingly, the Examiner is requested to examine this application and pass all pending claims onto issuance.

If the Examiner believes that an interview would be helpful in expediting the allowance of this application, the Examiner is requested to telephone the undersigned at 202-835-1753.

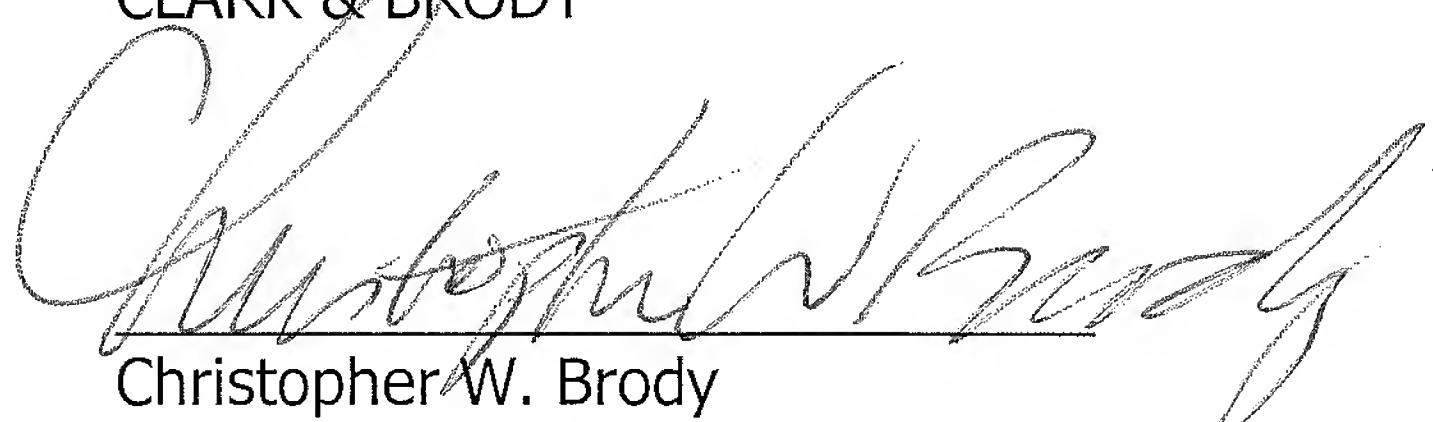
The above constitutes a complete response to all issues raised in the outstanding Office Action.

Again, reconsideration and allowance of this application is respectfully requested.

Applicants petition for a three month extension of time. Payment is made in conjunction with the electronic filing of this amendment.

Please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,
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